



FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2429

Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Interim final rule; request for comments.

SUMMARY: The Federal Labor Relations Authority (FLRA) is implementing this interim final rule with comment period (interim final rule) to enable parties to proceedings before the FLRA's three-Member, decisional component (the Authority) to voluntarily request – in individual cases filed through the FLRA's electronic-filing (eFiling) system – that the Authority use electronic mail (e-mail) to serve the requesting parties any decisions, orders, and notices (Authority documents) issued in those individual cases. The Authority welcomes comments on this interim final rule.

DATES: This interim final rule is effective on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. The FLRA will accept public comments until **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may send comments, which must include the caption “Miscellaneous and General Requirements,” by one of the following methods:

- E-mail: FedRegComments@flra.gov. Include “Miscellaneous and General Requirements” in the subject line of the message.
- Mail: Erica Balkum, Chief, Office of Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street NW, Washington, DC 20424-0001.

Instructions: Do not mail written comments if they have been submitted via email.

Interested persons who mail written comments must submit an original and 4 copies of

each written comment, with any enclosures, on 8½ x 11 inch paper. Do not deliver comments by hand.

FOR FURTHER INFORMATION CONTACT: Erica Balkum, Chief, Office of Case Intake and Publication at ebalkum@flra.gov or at: (771) 444-5805.

SUPPLEMENTARY INFORMATION: Currently, the FLRA's regulations do not recognize e-mail transmission as an official method of service of Authority documents on parties to Authority proceedings. The Authority has received numerous party requests for e-mail service of such documents, particularly due to an increase in telework and remote work by party practitioners. E-mail service would allow parties to receive Authority documents on the same day of service. Under the FLRA's regulations, when Authority documents are served by first-class mail, the responding party receives five additional days for filing any responsive filings. 5 CFR 2429.22. However, the Authority has found that there have been many instances when mail has taken longer than five days to reach the intended recipient, thereby shortening the recipient's response time. Allowing parties to opt for e-mail service of Authority documents would avoid that problem and thereby improve customer service.

In addition, preparing and mailing paper copies of Authority documents to parties imposes significant costs on the Authority in terms of staff time, supplies, and equipment maintenance. Making e-mail service a recognized, official method of service would also reduce or eliminate these costs.

For these reasons, the Authority hereby amends its regulations to allow parties using the FLRA's eFiling system to consent to e-mail service of Authority documents in individual cases. If a party consents to e-mail service in a particular case, then the Authority shall serve documents on that party exclusively by e-mail to the e-mail address that the party provides in the eFiling system. It is the party's obligation to maintain a

valid e-mail address in the system for proper service. When the Authority serves parties Authority documents by e-mail, the date of service shall be the date the e-mail is sent.

We emphasize that these amendments apply only to documents issued by the FLRA's Office of Case Intake and Publication in cases pending before the FLRA's Members. It does not apply to documents issued in cases pending before other FLRA offices or components, such as the Office of Administrative Law Judges or the Office of the General Counsel.

The Authority finds that this interim final rule is not a substantive rule, but is a rule of agency organization, procedure, or practice, for which advance notice is not required. 5 U.S.C. 553(b)(A); *Chrysler Corp. v. Brown*, 441 U.S. 281, 301-02 & n.30 (1979) (stating that a substantive or legislative rule is one that "affect[s] individual rights or obligations"). However, as noted above, the Authority welcomes comments on this interim final rule.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the FLRA has determined that this interim final rule will not have a significant impact on a substantial number of small entities, because this interim final rule applies only to Federal agencies, Federal employees, and labor organizations representing those employees.

Executive Order 12866, Regulatory Review

The FLRA is an independent regulatory agency and thus is not subject to the requirements of E.O. 12866 (58 FR 51735, Sept. 30, 1993).

Executive Order 13132, Federalism

The FLRA is an independent regulatory agency and thus is not subject to the requirements of E.O. 13132 (64 FR 43255, Aug. 4, 1999).

Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This interim final rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq.

List of Subjects in 5 CFR Part 2429

Administrative practice and procedure, Government employees, Labor management relations.

For the reasons stated in the preamble, the FLRA amends 5 CFR part 2429 as follows:

PART 2429-MISCELLANEOUS AND GENERAL REQUIREMENTS

1. The authority citation for part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134; § 2429.18 also issued under 28 U.S.C. 2112(a).

2. Amend § 2429.12 by revising paragraphs (a) and (c) to read as follows:

§ 2429.12 Service of process and papers by the Authority.

(a) *Methods of service.* Notices of hearings, decisions and orders of Regional Directors, decisions and recommended orders of Administrative Law Judges, decisions of the Authority, complaints, amended complaints, withdrawals of complaints, written rulings on motions, and all other papers required by this subchapter to be issued by the Authority, the General Counsel, Regional Directors, Hearing Officers, Administrative Law Judges, and Regional Directors when not acting as a party under part 2423 of this subchapter, shall be served personally, by first-class mail, by facsimile transmission, by certified mail, or, as described below with respect to documents issued by the Authority, by electronic mail (hereinafter, “e-mail”). Where facsimile equipment is available, rulings on motions; information pertaining to prehearing disclosure, conferences, orders, or hearing dates, and locations; information pertaining to subpoenas; and other similar or time sensitive matters may be served by facsimile transmission. Where a party using the FLRA’s eFiling system has consented to electronic service of documents issued by the Authority in a particular case, the Authority shall serve documents on that party exclusively by e-mail to the e-mail address provided by the party.

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(c) *Proof of service.* Proof of service shall be verified by certificate of the individual serving the papers describing the manner of such service. When service is by mail, the date of service shall be the day when the matter served is deposited in the United States mail. When service is by facsimile, the date of service shall be the date the facsimile transmission is transmitted and, when necessary, verified by a dated facsimile record of transmission. When parties are served documents by the Authority by e-mail, the date of service shall be the date the e-mail is sent.

Approved: July 3, 2023

Rebecca J. Osborne,

Federal Register Liaison,

Federal Labor Relations Authority.

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